

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**RECEIVED
CENTRAL FAX CENTER****JAN 16 2006**

Applicant : Brent E. Green
Appl'n. No. : 10/517,987
Title : COLOUR REDUCTION IN CANOLA PROTEIN ISOLATE
Docket No. : 7865-218 MIS/jb
Date : January 16, 2006

RECEIVED**BY FACSIMILE****(571) 273 8300****9 FEB 2006**

Mail Stop Petition
Commissioner of Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
U.S.A.

Legal Staff
International Division

**PETITION TO REVIVE UNINTENTIONALLY
ABANDONED APPLICATION UNDER 37 CFR 1.137(b)**

Sir:

Petition is hereby made under the provisions of 37 CFR 1.137(b) to revive this unintentionally abandoned application. The application stands abandoned for failure to respond in timely manner to the Notice of Missing Requirements dated June 13, 2005.


In support of this Petition, submitted herewith are:

1. Petition to Accept Application under 37 CFR 1.47(a), being the reply required to the Notice,
2. Authorization to charge the Petition fee to our deposit account,
3. It is hereby stated that the abandonment was intentional and that the entire delay in filing the required reply from the due date for the reply to filing of this Petition was unintentional.

Respectfully submitted,

01/18/2006 GFREY1 00000167 192253 10517987
03 FC:1453 1500.00 DA

Toronto, Ontario, Canada,
(416) 849-8400
FAX No. (416) 595-1163


Michael I. Stewart
Reg. No. 24,973

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicant : Brent E. Green
Appl'n. No. : 10/517,987
Title : COLOUR REDUCTION IN CANOLA PROTEIN ISOLATE
Docket No. : 7865-218 MIS/jb
Date : January 16, 2006

JAN 16 2006

BY FACSIMILE

(571) 273 8300

Mail Stop Petition
Commissioner of Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
U.S.A.

PETITION TO ACCEPT APPLICATION UNDER 37 CFR 1.47(a)

Sir:

Petition is hereby made under the provisions of 37 CFR 1.47(a) to proceed with this application in the absence of a Declaration and Power of Attorney signed by inventor Lei Xu and in the absence of a Declaration and Power of Attorney signed by inventor Radka Milanova on behalf of Lei Xu.

Submitted herewith in support of this Petition are:

1. Declaration and Power of Attorney documents (2) signed by inventors Brent E. Green, Radka Milanova and Kevin Segall,
2. Declaration and Power of Attorney document signed by Brent E. Green and Kevin Segall on behalf of Lei Xu,
3. Copy of Notice of Missing Requirements,
4. Authorization to charge the Surcharge Fee and Petition Fee to our deposit account,
5. Declaration of Michael I. Stewart with respect to the facts on which this Petition is based.

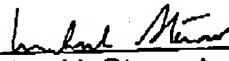
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Application No. 10/517,987

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Having regard to the contests thereof, it is submitted that the Petition ought to be granted.

Respectfully submitted,



Michael I. Stewart
Reg. No. 24,973

Toronto, Ontario, Canada,
(416) 849-8400
FAX No. (416) 595-1163

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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JAN 16 2006

Applicant : Brent E. Green
Appl'n. No. : 10/517,987
Title : COLOUR REDUCTION IN CANOLA PROTEIN ISOLATE
Docket No. : 7865-218 MIS/jb
Date : January 16, 2006

BY FACSIMILE

(571) 273 8300

Mail Stop Petition
Commissioner of Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
U.S.A.

DECLARATION UNDER 37 CFR 1.47(a)

Sir:

I, Michael I. Stewart of 1180 Carey Road, Oakville, Ontario, Canada, L6J
2E4 declare as follows:

1. I am registered to practise before the PTO under Registration
Number 24,973 and am responsible for the preparation, filing and prosecution of this
application.
2. This application name Brent E. Green, Lei Xu, Radka Milanova
and Kevin I. Segall as coinventors. The beneficial owner is Burcon Nutrascience (MB)
Corp. ("Burcon"). This application was filed on December 15, 2004 as a US National
Phase filing under 35 USC 371 from PCT/CA2003/000934 filed June 20, 2003 with a
Petition not signed by any of the inventors.
3. When I reported out the filing of this application to my contact
person at Burcon's headquarters in Vancouver, I forwarded to each of the inventors at
their last known address, the Declaration and Power of Attorney for execution along
with a copy of the published PCT application for reference. The last known address for
Lei Xu is:

Apt. 116-981 Gulf Place, Ottawa, Ontario, Canada, K1K 3X9.

I am attaching as Exhibit I a copy of the letter addressed to my contact person.

Application No. 10/517,887

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4. I knew from dealings with respect to Application No. 10/496,071, assigned to the same assignee, that we had been unable to obtain the signature of Lei Xu with respect to Declaration and Power of Attorney documents for US applications. When I did not receive the return of the executed papers by mid-February 2005, I re-sent the papers to Lei Xu and, enclosed as Exhibit II, is a copy of my follow-up letter. When I still did not hear from Mr. Xu, I sent a further copy of the material by courier and I enclose as Exhibits III and IV, the letter I sent and the courier tracking information, showing the shipment to have been delivered and signed for. No reply has been received from Lei Xu. It is submitted that the pattern of activity exhibited by Lei Xu, both in this application and Application No. 10/496,071 is tantamount to a refusal to sign a Declaration and Power of Attorney for this application.

5. Fully expecting no reply to my third attempt to obtain a signature, in view of the prior pattern of activity (or the lack thereof) in Application No. 10/496,071 and the pattern with respect to this filing, I put in motion the steps necessary to obtain Declaration and Power of Attorney documents signed by the other three inventors on behalf of Lei Xu. I enclose as Exhibit V a copy of my letter to my contact person at Burcon, requesting that she arrange for execution of the paper by inventor Radka Milanova. I did not anticipate any difficulty in obtaining the signature, since Radka Milanova had already signed the Declaration and Power of Attorney for the application. No reply was received from Lei Xu.

6. I contacted my contact person at Burcon on a number of succeeding dates and she advised me of several attempts to contact Radka Milanova to have her execute the Declaration and Power of Attorney on behalf of Lei Xu. I am attaching an Exhibit VI, a copy of an email from my Burcon contact person detailing attempts to contact Radka Milanova. It is submitted that the pattern of activity is tantamount to a refusal by Radka Milanova to execute the Declaration and Power of Attorney on behalf of Lei Xu.

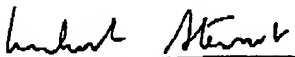
7. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are

Application No. 10/517,987

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believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application or any patent issuing thereon.

Declared at 16th day of January, 2006.



Michael I. Stewart

Sim & McBurney

Patent and Trade Mark Agents

330 University Avenue
6th floor
Toronto, Canada
M5G 1R7

Telephone (416) 595-1155
Fax (416) 595-1163

Exhibit I

MICHAEL I. STEWART
TONI POLSON ASHTON
JOHN H. WOODLEY
KENNETH D. MCKAY
TIMOTHY M. LOWMAN
STEPHEN M. LANE
PATRICIA A. RAE
DAVID A. RUSTON
LOLA A. BARTOSZEWICZ
ANDREW R.O. JONES

LYNDA P.S. COVELLO
KIMBERLY A. MC MANUS
MATTHEW D. POWELL
MICHAEL S. COLUCCI
MARCO M. CLEMENTONI
KENNETH M. T. MURPHY
MARLYE MONFISTON
SENIOR CONSULTANT
PETER W. MCBURNEY
TECHNICAL ASSISTANTS
NICHOLAS J. CARTER, Ph.D., LL.B.
LORRAINE M. FLECK, M.Sc., LL.B.
KENNETH K. MA, Ph.D.

Please Quote

Our ref. 7865-208 to -219 MIS:jb

Your ref. -

Writer's Ext. 239

E-mail: mistewart@sim-mcburney.com

December 23, 2004

Margo Osinski
Burcon Group Limited
1946 West Broadway
Vancouver, British Columbia
V6J 1Z2.

Dear Margo:

**RE: New National Phase Patent Applications
pursuant to PCT/CA2003/000934
COLOUR REDUCTION IN CANOLA PROTEIN ISOLATE**

In accordance with your instructions, I have proceeded with National Phase applications in Australia, Brazil, Canada, China, Europe, Japan, South Korea, Mexico, New Zealand, South Africa, Russian Federation and the United States of America. The National Phase applications are identified individually by file numbers, as follows:

Australia	7865-208	Brazil	7865-209
Canada	7865-210	China	7865-211
Europe	7865-212	Japan	7865-213
South Korea	7865-214	Mexico	7865-215
New Zealand	7865-216	South Africa	7865-217
U.S.A.	7865-218	Russian Federation	7865-219

The Canadian and US cases were filed with the same claims as the International application. I have prepared new sets of claims with respect to other jurisdictions and enclose a set of claims as filed in Australia and New Zealand, a set of claims as filed in South Africa, a set of claims as filed in Europe, a set of claims as filed in Brazil, China, Japan, South Korea, Mexico and a set of claims as filed in Russian Federation.

- 2 -

There are formal papers requiring execution on behalf of Burcon with respect to these filings and these are enclosed. If you have any difficulty with respect to the manner of execution of these papers, please do not hesitate to contact me. I look forward to the return of the executed papers in due course.

I have sent the papers requiring execution by Brent Green and Kevin Segall directly to Winnipeg with a copy of this letter. I have also directly forwarded documentation requiring execution by Radka Milanova and Lei Xu with a copy of this letter.

The filing particulars for these applications will be reported to you when received. I will keep you advised of developments.

Yours very truly,

SIM & McBURNEY

By:

M.I.Stewart/jb
Enclosure(s)

cc: Brent E. Green
Kevin Segall
Radka Milanova
Lei Xu

Exhibit II

Sim & McBurney

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ANDREW R.O. JONES

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KENNETH M. T. MURPHY
MARLYN MONFISTON
SENIOR CONSULTANT
PETER W. MCBURNEY

TECHNICAL ASSISTANTS
NICHOLAS J. CARTEL, Ph.D., LL.B.
LORRAINE M. FLECK, M.Sc., LL.B.
KENNETH K. MA, Ph.D.

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Our ref. 7865-208 to -219 MIS:jb

Your ref.

Writer's Ext. 239

E-mail: mistewart@sim-mcburney.com

February 14, 2005

Lei Xu
Apt. 116-981 Gulf Place
Ottawa, Ontario
K1K 3X9.

Dear Lei:

**RE: New National Phase Patent Applications
pursuant to PCT/CA2003/000934
COLOUR REDUCTION IN CANOLA PROTEIN ISOLATE**

Further to my letter of December 23, 2004 to Margo Osinski, a copy of which is enclosed, I do not appear to receive the executed papers and I enclose a new Declaration and Power of Attorney document for execution in the event the original one has been mislaid. I look forward to the return of the executed paper shortly.

Yours very truly,

SIM & MCBURNEY

By:

M.I. Stewart/jb
Enclosure(s)

cc: Margo Osinski

Exhibit III

Sim & McBurney

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LORRAINE M. FLECK, M.Sc., LL.B.
KENNETH K. MA, Ph.D.

Please Quote

Our ref. 7865-218 MIS:jb

Your ref.

Writer's Ext. 239

E-mail: mistewart@sim-mcburney.com

June 28, 2005

Via Courier

Lei Xu
Apt. 116-981 Gulf Place
Ottawa, Ontario
K1K 3X9.

Dear Lei:

**RE: US Patent Application No. 10/517,987
COLOUR REDUCTION IN CANOLA PROTEIN ISOALTE**

Further to my letters of December 23, 2004 and February 14, 2005, copies of which are enclosed, please find enclosed a new Declaration and Power of Attorney paper for execution in connection with this US filing. In addition, I am enclosing a further copy of the published PCT application on which this application is based. Please sign and return the Declaration and Power of Attorney document as soon as possible.

Yours very truly,

SIM & MCBURNEY

By:

M.I. Stewart/jb
Enclosure(s)

Exhibit IV



Ship

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Track results detail

Tracking results detail for 7326873746

Track

- ▶ Track by number
- ▶ Track by reference
- ▶ Get delivery signature
- ▶ Track DHL Same Day service

Log in to DHL

User ID Password ☐ Remember my User ID

Log in

▶ Forgot your Password?

Tracking summary

Current Status ✓ Shipment delivered.

Delivered on 7/29/2005 1:24 pm

Delivered to

Signed for by **CAROLINE C** What is this?

Tracking history

Date and Time

7/29/2005 1:24 pm

7/19/2005 7:28 pm

5:41 pm

7/4/2005 12:33 pm

12:16 pm

12:15 pm

6/30/2005 2:00 pm

6/29/2005 6:00 pm

Ship From:

Toronto, Canada

Status

Shipment delivered.

Delivery Attempted.

Please Call 1-888-273-8876.

Recipient refused delivery.

Delivery Attempted.

Please Call 1-888-273-8876.

Delivery Attempted.

Please Call 1-888-273-8876.

Delivery Attempted.

Please Call 1-888-273-8876.

Picked Up by DHL.

Ship To:

Ottawa, Canada

Location

Ottawa, Canada

Ottawa, Canada

Ottawa, Canada

Ottawa, Canada

Ottawa, Canada

Ottawa, Canada

Ottawa, Canada

Attention:

Attention:

Tracking detail provided by DHL: 12/23/2005, 9:12:08 am pt.

Shipment Information:

Ship date: 6/29/2005

Pieces: 1

Total weight: 1 lb

Ship Type:

Shipment Reference: 7865-218-9

Service: Next Day

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Exhibit V

Sim & McBurney

Patent and Trade Mark Agents

330 University Avenue
6th floor
Toronto, Canada
M5G 1R7

Telephone (416) 595-1155
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MICHAEL I. STEWART
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NICHOLOS J. CARTEL, Ph.D., LL.B.
LORRAINE M. FLECK, M.Sc., LL.B.
KENNETH K. MA, Ph.D.

Please Quote

Our ref. 7865-218 MIS:jb

Your ref. -

Writer's Ext. 239

E-mail: mistewart@sim-mcburney.com

June 28, 2005

Margo Osinski
Burcon Group Limited
1946 West Broadway
Vancouver, British Columbia
V6J 1Z2.

Dear Margo:

**RE: US Patent Application No. 10/517,987
COLOUR REDUCTION IN CANOLA PROTEIN ISOLATE**

In the absence of the return of an executed Declaration and Power of Attorney document by Lei Xu, we need to proceed by way of having the other inventors sign on behalf of Lei Xu.

I have forwarded the papers requiring execution by Brent Green and Kevin Segall to Winnipeg with a copy of this letter. Please arrange for Radka Milanova to execute the enclosed paper.

Yours very truly,
SIM & MCBURNEY

By:

M.I.Stewart/jb
Enclosure(s)

cc: Martin Schweizer

Exhibit VI

Stewart, Michael

From: Margo Osinski [mosinski@burcon.ca]
Sent: Monday, December 12, 2005 6:17 PM
To: 'Stewart, Michael'
Subject: RE: Radka Milanova

Michael,

- (1) I sent documents to Radka's home address (I think this was late August/ early September).
- (2) I e-mailed Radka on September 9 to follow up on the documents and she responded that she probably received them but would not be back until October 5.
- (3) I followed up by e-mail on October 6 and then again on October 28 with no reply.
- (4) I called Radka's home number and left a voice message (mid November). I also called Radka's cell phone and someone (man) picked up and hung up on me when I asked for Radka (early November). I believe that I tried calling the cell phone number again but no one picked up (early November).
- (5) On November 17, I called the POS Pilot Plant and asked for Radka's contact information but was told the information was confidential. On November 17, I e-mailed Tom Gottmoller (POS Pilot Plant Board of Governors), explained the situation to him and requested Radka's contact information. He declined to provide me the contact information but promised to forward my e-mail to Radka.

Margo

-----Original Message-----

From: Stewart, Michael [mailto:mistewart@sim-mcburney.com]
Sent: Monday, December 12, 2005 11:07 AM
To: Margo Osinski
Subject: Radka Milanova

Margo:

Can you itemize for me the steps you have taken to attempt to get Radka's signature on papers for the US Colour Reduction case? (7865-218). Thanks

Michael Stewart

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